



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

**MAY 21 2013**

Phillip K. Eure, Esq.  
Executive Director  
Office of Police Complaints  
1400 I Street N.W., Suite 700  
Washington, D.C. 20005

Dear Mr. Eure:

This letter is in response to the Office of Police Complaints (OPC) draft policy recommendation entitled, "Warrantless Entries into Private Homes by MPD Officers."

This report states that it *"hopes to bring about reforms that have potential to reduce the incidence of police misconduct."* The MPD most certainly supports all efforts to reduce incidences of police misconduct; however MPD believes the OPC report inaccurately depicts a systemic problem, and that current policy and procedures are sufficient to prevent warrantless entries into private homes.

The report discusses four cases. Only one of the four cases discussed involved an actual "search of the home." The remainder of the cases involved officers inside the home to conduct other police business unrelated to an actual search. Additionally, Assistant Chief Michael Anzallo obtained additional data from OPC, and found since 2007, a total of twelve (12) cases have alleged police misconduct related to officers entering private homes without permission, or without a warrant. These twelve cases represent a very small portion of all matters referred to the OPC. In OPC's Annual Report, OPC states it has received over 550 cases annually for the last several years. Complaints of warrantless searches represent one-half of one percent of all the cases received by OPC. Yet with the issuance of this report, it appears OPC is stating that MPD routinely violates the Fourth Amendment of the Constitution, which is simply not accurate and a regrettable characterization of MPD operations.

Further, OPC reports that of these 12 cases, three are still open and under investigation. In regard to the other cases, OPC sustained five misconduct cases; one case was unfounded by OPC investigation; one complaint was successfully mediated; one case was referred back to MPD; and one case was withdrawn. Therefore, based on OPC numbers, it would indicate that in only five cases it has been determined that MPD violated any policy or law, as it relates to warrantless entry into a home since 2007.

MPD also queried the Office of the Attorney General (OAG) to determine if there are any civil actions against MPD related to warrantless entry into homes.

Although the databases do not capture every instance in which an allegation is made about warrantless entry, approximately 8 cases have been received since 2009 alleging MPD improperly entered a home without a warrant. Of those cases, one has been dismissed when the court ruled MPD did have exigent circumstances to enter the home, one case resulted in summary judgment for the plaintiff when the court disagreed with the assertion of exigent circumstances, and the remaining cases are pending court action.

Highlighted in the OPC report is information from the MPD 2011 Annual Report regarding citizen complaints. In this citation, it is indicated that a total of seven citizen complaints had alleged that an "Improper Search" was conducted. In reading the report, it seems to imply that these cases are part of an agency-wide problem associated with warrantless entries into homes. Of these seven cases, only one involved an allegation of an improper search of a home. In that case, a formal investigation was conducted and determined that members of the Montgomery County Police Department, along with the United States Marshal's Service, conducted the initial entry into the home looking for a wanted subject in regard to a homicide investigation. MPD was called to the scene after entry was made only to assist in the arrest and recovery of a firearm that was in plain view. In this case, MPD was *Exonerated* of misconduct with regard to the search that had occurred. In all cases, whether from OPC or MPD, when an officer was found to have violated policies regarding warrantless entry into homes, MPD has taken corrective actions.

It is clear that the vast majority of officers continue to follow the law and policy of the Department in their conduct. MPD has appropriately dealt with the few officers who have misapplied the warrant exception to entering homes. Within the report, it is stated that OPC hopes to reduce the number of citizen complaints lodged against MPD members, and limit the District's civil liability. It is MPD's perspective that the findings of this report do not support that a systematic problem exists at MPD.

The report makes specific recommendations. For your review and consideration is our response to each of the recommendations:

- 1. MPD should develop and distribute a general order on the subject of exigent circumstances.**

*General Order No. 702.3 (Search Warrants) and Special Order 86-1 (Warrantless Searches of Crime Scenes) are the Orders which currently address search warrants and warrantless searches. The Policy and Directive Branch of MPD is already in the process of incorporating Special Order 86-1 into General Order 702.3 as part of a routine review of all orders.*

**2. MPD should develop and provide better training, both at the academy and in-service, on what constitutes exigent circumstances.**

*Currently, the training for new recruits in the area of Laws of Arrest, Search and Seizure is a 46-hour long class. Included in this training is a specific discussion of the Fourth Amendment, which is focused on related case law, coupled with lengthy reviews of the exigent circumstance provision. Contrary to the OPC assertion, it is impossible to specifically cite every instance, and what additional related material should be included in the lesson plan or directive related to exigent circumstances. What is clear is that MPD teaches related constitutional law, case law, and information to its members; and with this solid footing members of the Department exercise their authority as police officers with diligence and restraint. In-Service training requirements maintain an equal level of importance as sworn experienced members are better able to comprehend and exercise their authority as peace officers, with their additional experience that they have obtained while working on the street. As for MPD policies, directives, and practices, these are in keeping with the limitations found in the Fourth Amendment to the Constitution and requirements for warrantless entries into a home.*

**3. MPD should appropriately discipline officers when they conduct warrantless entries or searches in the absence of exigent circumstances.**

*When members have been found to have violated Department policies, appropriate administrative action has occurred. Current MPD policies found in General Order No. 201.26 (Duties, Responsibilities, and Conduct of Members of the Department) and General Order No. 201.36 (Metropolitan Police Department Sworn Law Enforcement Code of Ethics) provides sufficient guidance of officer conduct, on or off duty. Our Disciplinary policies and procedures are progressive, when appropriate, and in keeping with the collective bargaining agreement and applicable personnel law.*

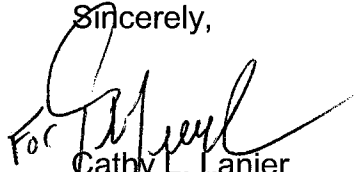
**4. MPD should require officers to document a search or entry into a private residence based on exigent circumstances.**

*General Order No. 702.3 (Search Warrants) and Special Order No. 86-1 (Warrantless Searches of Crime Scenes) specify which, when, and how forms are to be completed in executing a search warrant of a home, or how consent to a search without a warrant is documented. In our review of this order, your recommendations will be included.*

The Department has reviewed this draft report, and finds that the report is not representative of the way MPD conducts business. With that in mind, it is important to emphasize the importance that the Metropolitan Police Department places on upholding the Fourth Amendment to the Constitution of the United States, especially with regard to its impact of the residents, businesses, and visitors of the District of Columbia.

In closing, we appreciate having the opportunity to comment on the report. As such, it is requested that our comments be included in the final report and are included as part of the public release. Should there be any questions or concerns, please feel free to contact me on 202-727-4218.

Sincerely,

  
Cathy L. Lanier  
Chief of Police